

ASSOCIATION OF LEGAL PROFESSIONALS (ALP)

April 5, 2011

Gina Donnelly
Office of Employee Relations
City of San Jose
200 East Santa Clara St.
San Jose, CA 95113

Re: Response to City's April 4, 2011 letter

Dear Ms. Donnelly:

This message is written in response to your e-mail message with letter attachment sent at 5:42 pm last evening. I am writing this response on behalf of ALP with the other members of our bargaining team who attended the last mediation session.

Your April 4 letter does not accurately reflect how the City and ALP agreed to proceed today and on April 14 during our last negotiation session.

First, ALP suggested that a brainstorming session with the City team would be beneficial in the interest of attempting to reach a tentative agreement that could be presented to both parties for approval. The City stated that it would prefer that such sessions be conducted in a closed (not open to the public) meeting, to which ALP agreed to the extent that closed negotiation sessions would favor resolution. When asked, the City representatives stated that they do not believe that negotiations are at impasse. ALP clearly stated that the City's minimal revisions to its original proposal does not address major points of concern and is not constructive to mutual resolution. That is why ALP agreed to meet in closed session with the City team -- in order to attempt to tentatively resolve those items that the City may not desire to bare in public. ALP conceded to the City's request to meet in closed session.

The City (not ALP) suggested use of a mediator as being helpful in retaining the confidentiality of the brainstorming, among other reasons, but ALP never agreed that the first such session must draw upon the assistance of a state mediator. In fact, when specifically asked about mediation, ALP responded that the parties should attempt to resolve among ourselves first. So, even without the assistance of a mediator today, we should continue to meet towards resolution. We would like to meet today as planned to receive the City's responses to ALP's requests for information and to be advised of whatever information the City has obtained about mediator availability in the future.. Second, when ALP expressed concern over the use of a mediator prior to any declaration of impasse, the City's legal counsel clarified at the negotiation that the use of a mediator at this point would *not* constitute a waiver by ALP of mediation after any declaration of impasse. It was clearly the understanding of the parties that mediation

Gina Donnelly
April 5, 2011
Page two

now would not preclude mediation later. The City is completely without authority to unilaterally determine in its April 4 letter that voluntary mediation now, prior to declaration of impasse, would somehow satisfy the mediation process under the City's (or state's) mediation procedure.

ALP does not share the assumption in the footnote to your letter that "[w]e do not believe that either of us would argue that back to back mediations over the same issues would be of any benefit" nor was this sentiment expressed by the City when it suggested use of a mediator at the last negotiation session. Rather, ALP believes that mediation could be of benefit if the City makes a real effort at reasonable negotiation. Mediation is not "back to back" unless the City is declaring impasse immediately. Mediation between the parties needs to be taken seriously and in good faith towards the goal of mutual resolution. Mediation towards the goal of agreement is most often not resolved in merely one or two sessions. Is the City so impatient that after the exchange of only a couple proposals -- with no meaningful movement by the City, and absolutely no movement on issues affecting vested rights of City employees that are not subject to meet and confer -- that it desires to impose rather than come to mutual agreement? Your letter seems to imply that there is no real desire by the City to engage in reasonable and creative discussions towards a mutually agreed upon resolution.

Last, we reiterate that ALP would like to meet this afternoon, if for no other reason, to obtain the City's response to ALP's requests for information, and to discuss the potential for advisory mediation that does not waive the party's rights to request mediation in the event of a declaration of impasse. Unless we hear otherwise from the City, we have accepted the City meeting invitation for this afternoon (April 5) and on April 14, and ALP fully intends to attend both of those negotiation sessions. Please inform us of the City's intent to continue negotiations in the manner previously agreed upon.

Sincerely,



VERA M. I. TODOROV

Vice President

Association of Legal Professionals

cc: Bill Clark
Brian Doyle
Barbara Jordan
Charles Sakai
Marco Mercado